

BEFORE THE
PUBLIC SERVICE COMMISSION OF WISCONSIN

Annual Reports for the Year Ended December 31, 2002, Filed by
Interexchange Carriers and Other Selected Entities on a Confidential Basis

RE: PSC Control Nos. 24046, 24047, 24051, 24052, 24072, 24073, 24077, 25747, 26007,
and 26008

CONFIDENTIALITY DETERMINATION

Introduction

On February 24, 2003, the Public Service Commission (Commission) issued a document entitled "Information Regarding Confidential Filings" concerning the 2002 Interexchange Carriers and Other Selected Alternative Telecommunications Utility-Other Telecommunications Provider Entities (ARW) annual report. The document detailed the filing process associated with the 2002 ARW annual report¹ as well as previous confidentiality rulings concerning ARW annual reports.²

On April 1 and May 15, 2003, AT&T Communications of Wisconsin I, LP (AT&T WI or entity 265) submitted written applications seeking confidential treatment (including trade secret

¹ The February 24, 2003, document noted that the 2002 ARW annual report could be filed using one of two procedures: 1) File the entire report on a public basis using the annual report program's e-mail capabilities; or 2) Submit a request for confidential handling, in accordance with Wis. Admin. Code § PSC 2.12, in conjunction with a manual filing of the report. A manual filing consists of two completed Confidentiality Request forms, two notarized affidavits, confidential hard copy pages, a confidential diskette containing annual report program files, and a complete public version of the 2002 report, the latter which is posted on the Commission's web page.

² The document noted that, subsequent to the Commission's denial of confidentiality requests concerning information contained in the 2001 ARW annual report, a number of companies sought judicial review or filed a petition for reconsideration and stay of the Commission's determination. The Commission voluntarily stayed its determination pending the outcome of those court cases, which were then pending in the Dane County Circuit Court, and/or any subsequent related Commission action. Those cases were decided in 2003. Although the Commission prevailed in part, it voluntarily accepted a remand to redetermine the challenged determinations. The determinations made in the present decision are consistent with the circuit court's construction of the confidentiality rule.

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status) of certain information in its 2002 ARW annual report. The information is filed under document PSC control numbers 24077 and 25747.³

On April 1, and 29, 2003, MCI WorldCom Network Services, Inc. (MCI WCOM Network or entity 3258), submitted written applications seeking confidential treatment (including trade secret status) of certain information in its 2002 ARW annual report. The information is filed under document PSC control numbers 24046, 24047, 24051, and 24052.⁴

In particular, both companies sought confidential treatment (including trade secret status) for the Calculation of Assessable Revenues for Remainder and Telephone Relay Assessment Purposes and Wisconsin Gross Intrastate Operating Telecommunications Service Revenue⁵ information on lines 1-5 and 6, respectively, on p. 6 of their respective 2002 ARW annual reports. For the reasons stated in a Confidentiality Determination dated July 8, 2003, confidential treatment for the above specifically identified data was granted on a provisional basis, without consideration of the merits of the arguments of either AT&T WI or MCI WCOM Network contained in respective affidavits accompanying the 2002 ARW annual reports, based on the then-pending status of related court cases.

On August 11, 2003, AT&T WI submitted written applications seeking confidential treatment (including trade secret status) of certain information in its 2002 ARW annual report. The information is filed under document PSC control numbers 24072 and 24073. On August 11, 2003, MCI WCOM Network submitted written applications seeking confidential treatment (including trade secret status) of certain information in its 2002 ARW annual report. The

³ Confidentiality Request Nos. 25747 (April 1, 2003), and 24077 (May 15, 2003).

⁴ Confidentiality Request Nos. 24046 and 24047 (April 1, 2003) and 24051 and 24052 (April 29, 2003).

⁵ This data is used to determine assessable revenues for intrastate universal service fund (USF) assessment purposes.

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information is filed under document PSC control numbers 26007 and 26008. Both companies' filings requested confidential treatment (including trade secret status) of the Calculation of Assessable Revenues for Remainder and Telephone Relay Assessment Purposes and Wisconsin Gross Intrastate Operating Telecommunications Service Revenue information in their respective 2002 ARW annual reports.

In 2002, nine court cases were filed. The nine cases were subsequently consolidated into two cases. One court case resulted in a decision favorable to the Commission's determinations; the other court case resulted in an adverse decision. See footnote 2.

This confidentiality determination is made pursuant to the Commission's jurisdiction under Wis. Stat. §§ 196.02(1), 196.14, and other provisions of Wis. Stat. ch. 196 and Wis. Stat. §§ 19.32-.39, as may be pertinent hereto, the Commission's November 21, 2000, order delegating confidential handling determinations, and Wis. Admin. Code § PSC 2.12.

Findings of Fact

1. AT&T WI and MCI WCOM Network are interexchange carriers (IXCs)⁶ which are required to file an ARW annual report with the Commission. The statutory filing date for the ARW annual report covering 2002 calendar year operations was April 1, 2003; eight IXCs and other selected entities were required to file, and have filed, this report for the 2002 calendar year.

2. The above requests for confidential handling concern portions of 2002 ARW annual reports which individually became Commission records, within the meaning of Wis. Stat. § 19.32(2).

⁶ AT&T WI became certified as a competitive local exchange carrier on March 7, 2003, subsequent to the 2002 calendar year report at issue in this determination.

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3. Each requester filed affidavits in support of the requests claiming that the records, if released, would aid a competitor of a public utility in competition with the public utility, as provided under Wis. Stat. § 196.14, and constitute trade secrets, as defined in Wis. Stat. § 19.32(2).

4. Pursuant to Wis. Admin. Code § PSC 2.12(6), the Commission has confidentially handled the records pending this determination and will continue to confidentially handle the records after the date of this determination.

5. The records contain information which derives independent economic value, actual or potential, from not being generally known to, and not being readily ascertainable by proper means by, other persons who can obtain economic value from its disclosure or use.

6. The records contain information that would aid a competitor of the respective entities in competition with the requesters.

Conclusions of Law

1. There is a reasonable basis to conclude that the records contain information which would aid a competitor of a public utility in competition with the public utility, within the meaning of Wis. Stat. § 196.14.

2. There is a reasonable basis to conclude that the records contain trade secrets within the meaning of Wis. Stat. § 134.90(1)(c).

Order

WHEREFORE, confidential treatment of Calculation of Assessable Revenues for Remainder and Telephone Relay Assessment Purposes and Wisconsin Gross Intrastate Operating

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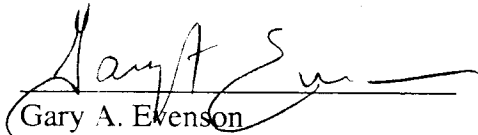
Telecommunications Service Revenue information in AT&T WI and MCI WCOM Network's 2002 ARW annual reports is **granted**. Trade secret status for such information under Wis. Stat. §§ 19.36(5) and 134.90(1)(c), as claimed by both companies, is likewise **granted**.

This confidentiality determination is not a final determination under the Public Records law; it is the Commission's decision for purposes of managing its files. This confidentiality determination does not prejudice the right of any person to submit a public records request to inspect the contents of the filings subject to this determination.

This order is effective upon mailing.

Dated at Madison, Wisconsin, 21 April 2004

For the Commission:


Gary A. Evenson
Administrator
Telecommunications Division

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See attached Notice of Appeal Rights

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Notice of Appeal Rights

Notice is hereby given that a person aggrieved by the foregoing decision has the right to file a petition for judicial review as provided in Wis. Stat. § 227.53. The petition must be filed within 30 days after the date of mailing of this decision. That date is shown on the first page. If there is no date on the first page, the date of mailing is shown immediately above the signature line. The Public Service Commission of Wisconsin must be named as respondent in the petition for judicial review.

Notice is further given that, if the foregoing decision is an order following a proceeding which is a contested case as defined in Wis. Stat. § 227.01(3), a person aggrieved by the order has the further right to file one petition for rehearing as provided in Wis. Stat. § 227.49. The petition must be filed within 20 days of the date of mailing of this decision.

If this decision is an order after rehearing, a person aggrieved who wishes to appeal must seek judicial review rather than rehearing. A second petition for rehearing is not an option.

This general notice is for the purpose of ensuring compliance with Wis. Stat. § 227.48(2), and does not constitute a conclusion or admission that any particular party or person is necessarily aggrieved or that any particular decision or order is final or judicially reviewable.

Revised 9/28/98